

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII WATER SERVICE COMPANY, INC.)
For Approval of Rate Increases and)
Revised Rate Schedules, and to)
Enter into Financing Arrangements.)

DOCKET NO. 03-0275

ORDER NO. 21700

Filed March 18, 2005
At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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K. Higashi

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ORDER

The commission denies HAWAII WATER SERVICE COMPANY, INC.'s ("HWSCI" or "HWSC") Motion for Partial Reconsideration, filed on February 22, 2005, of Decision and Order No. 21644 ("Motion"), filed on February 11, 2005.¹

I.

Background

HWSCI, by its Motion, seeks partial reconsideration of the commission's Decision and Order No. 21644, filed on February 11, 2005. HWSCI makes its request pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-41 and 6-61-137. HWSCI's Motion is supported by the Affidavit of its general manager. HWSCI does not request a hearing on its Motion.

¹HWSCI's Motion for Partial Reconsideration of Decision and Order No. 21644, Affidavit (facsimile copy), and Certificate of Service. See also HWSCI's transmittal letter, dated February 22, 2005; and original Affidavit, filed February 23, 2005.

HWSCI served copies of its Motion upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate") (collectively, the "Parties"). On March 4, 2005, the Consumer Advocate filed its Memorandum in Support of HWSCI's Motion ("Memorandum").²

II.

Motion for Partial Reconsideration

The commission, in Decision and Order No. 21644, disallowed the inclusion of the costs of HWSCI's proposed two (2) new wells in HWSCI's plant-in-service for the July 1, 2004 to June 30, 2005 test year ("test year"):

The Parties' agreement of an automatic future step increase or increases following the installation of one (1) or both new wells, even though the completion and used and useful use of the two (2) new wells may occur outside of the test year: (1) violates the test year concept; (2) is speculative; (3) sets a precedent this commission declines to establish; and (4) is neither just nor reasonable under the circumstances. . . .³

The proposed two (2) new well sites are situated in the Hanakoo and Mahinahina districts, respectively.⁴

²The commission, by Order No. 21656, filed on February 25, 2005, instructed the Consumer Advocate to file a response to HWSCI's Motion.

³Decision and Order No. 21644, at 15 - 16.

⁴Id. at 12 (citing HWSC-2 at 10, direct testimony of HWSCI's general manager).

"HWSC acknowledges the Commission's objection to allowing the new wells to be included in rate base if they are not placed in service within the test year."⁵ Nonetheless, HWSCI, through its supporting Affidavit, represents, verbatim:

1.
2. HWSC recently reopened negotiations with Amfac regarding the purchase of Amfac's Hahakea well.
3. HWSC is currently in the process of obtaining an appraisal of the land on which the Hahakea well is located, has performed an analysis of the value of the well facilities, and plans to submit an offer to purchase the well to Amfac within a month.
4. Because this is an existing well, if these negotiations are fruitful, HWSC may be able to complete the purchase of the Hahakea well which is already physically connected to HWSC's system, before the end of the test year, June 30, 2005.
5. HWSC believes that the Hahakea well will meet its needs for one of the two wells requested in Docket No. 03-0275 for reliability and to augment water supply during periods of high demand.⁶

"HWSC therefore requests that if one new well is placed in service before June 30, 2005, HWSC be permitted to request a step increase to include the cost of this new well in rate base."⁷ In support thereto, HWSCI asserts:

The Commission has allowed step increases for plant that is placed in service during the test

⁵HWSCI's Motion, at 4.

⁶HWSCI's Affidavit, paragraphs 2 - 5. See also HWSCI's Motion, at 4.

⁷HWSCI's Motion, at 4.

year in slightly different procedural circumstances. . . . While these cases involved interim step increases, the principal is the same, i.e. that the utility was allowed to recover the cost of plant placed in service during the test year.⁸

In this case, there is no question that the proposed new well is required both for additional capacity and to address the level of chlorides in the water. When the currently utilized wells are run at full production, the water chlorides are at unacceptable levels. Because of this pumping limitation, the new well is necessary to meet average daily demand. (HWSC-RT-200, p. 6 - 7). The Consumer Advocate also agrees that additional wells are needed to improve water quality and reliability. (Stipulation at 44).

Moreover, "[t]he avoidance of annual rate cases is a legitimate objective of a rate proceeding." HECO at 2. If the new well is excluded from the test year rate base, it would likely result in HWSC filing a new general rate increase application shortly after completion of this rate case based primarily on the inclusion of the new well in HWSC's rate base.

Without an additional increase in rates, HWSC will be denied an opportunity to earn a fair return on its test year rate base if the Hahakea well is placed in service by the end of the test year. Accordingly, HWSC respectfully requests that it be allowed to request a step increase to reflect the inclusion of the cost of one new well in its rate base if the well is placed in service by the end of the test year.

Including the well in rates would allow HWSC to receive an increase in revenue requirement of \$257,300 or 8.28% over the rates approved in Decision and Order No. 21644. HWSC requests that the Commission allow HWSC to submit a request for step increase in an amount not to exceed 8.28% by a tariff filing, to be supported by evidence that the new well was placed in service prior to June 30, 2005, together with evidence of the

⁸HWSCI cites to: (1) Decision and Order No. 14195, filed on August 30, 2005, in Docket No. 7766, *In re Hawaiian Elec. Co., Inc.*; and (2) Order No. 12378, filed on May 7, 1993, in Docket No. 7000, *In re Maui Elec. Co., Ltd.*

actual cost of the new well. HWSC believes that this will address the Commission's concerns about allowing additions to rate base that are placed in service outside of the test year, while also addressing the concerns of HWSC and the [Consumer Advocate] CA that HWSC not be required to immediately file another rate case application to recover the cost of the new well, or be denied the opportunity to earn a fair return on the well.⁹

HWSCI states that its Motion is filed pursuant to HAR §§ 6-61-41 and 6-61-137.

HAR § 6-61-41 is the general rule governing the filing of a motion. HAR § 6-61-137 applies to a motion for reconsideration, and requires that the motion set forth "specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous."

HWSCI contends:

1. The portion of Decision and Order No. 21644 "denying the request for approval of the step increases due to the installation of the new wells is erroneous to the extent that it denies inclusion of the new well(s) if they are placed in service during the test year."¹⁰

2. Decision and Order No. 21644 "is unreasonable, since a new well is necessary to meet average daily demand, and without a step increase, HWSC will be denied an opportunity to earn a fair return on its rate case without having to go through another general rate increase proceeding."¹¹

⁹HWSCI's Motion, at 4 - 6.

¹⁰Id. at 1 - 2.

¹¹Id. at 2.

The Consumer Advocate states that, consistent with the Parties' Stipulation: (1) it does not oppose HWSCI's request for a step increase should HWSCI succeed in placing a new well into service before June 30, 2005; and (2) the Parties "have agreed upon the magnitude of the increase that should be granted should each of the two wells be placed in service."¹²

Nonetheless, the Consumer Advocate emphasizes that its support of HWSCI's Motion is qualified upon the following conditions:

1. If the actual purchase price of the Hahakea well exceeds the estimated cost of the two (2) new wells, the increase in HWSCI's revenue requirement should be limited to the 8.28 per cent set forth in the Parties' Stipulation.

2. If the cost of the Hahakea acquisition and service activation is less than the estimated cost of the two (2) new wells, the resulting increase in revenue requirement should be based upon the actual purchase price.

3. It is "given the opportunity to evaluate the issues related to the Hahakea well prior to the authorization of the amount of the step increase."¹³

¹²Consumer Advocate's Memorandum, at 2 (footnote and text therein omitted).

¹³Id. at 3.

The Consumer Advocate also makes the following observations:

1. "The information presented by HWSC in its Motion . . . was not included in the existing record."¹⁴

2. "HWSC's assertion . . . that HWSC may acquire an already constructed well from Amfac is new information that the Consumer Advocate has not had an opportunity to evaluate. The agreed-upon cost has yet to be determined between Amfac and HWSC. It is unclear whether the water quality of the well will allow HWSC to address the water quality issues raised in the public hearing. It is also unclear whether this well will be of sufficient productivity to address the reliability issues. These are but some of the questions that should be asked relating to the [Hahakea] well."¹⁵

Ultimately, the Consumer Advocate offers its qualified and conditional support of HWSCI's Motion.

HWSCI neglects to mention or address HAR § 6-61-139 as a basis for its Motion. This rule states:

Additional evidence. When, in a motion filed under this subchapter, a request is made to introduce new evidence, the evidence adduced shall be stated briefly, that evidence must not be cumulative, and an explanation must be given why that evidence was not previously adduced.¹⁶

¹⁴Id.

¹⁵Id. (footnote and text therein omitted)

¹⁶The term subchapter refers to chapter 6-61, subchapter 14, governing motions for reconsideration or rehearing. A copy of subchapter 14 is attached as Exhibit 1 to this Order.

Stripped to its essence, HWSCI does not challenge the commission's disallowance of the two (2) new wells in HWSCI's test year plant-in-service. Instead, HWSCI seeks to introduce new evidence, by way of its Affidavit, in support of its request for a step increase of \$257,300, or 8.28 per cent over the rates approved by the commission in Decision and Order No. 21644.

The new evidence consists of HWSCI's proposed purchase of an existing well, known as the Hahakea well, from Amfac, in contrast with the proposed two (2) new wells the commission disallowed in Decision and Order No. 21644. Simply put, this new evidence represents a change in plans by HWSCI.

A.

HAR § 6-61-139

HWSCI fails to cite anywhere in the docket record where its proposed purchase of the Hahakea well is mentioned or contemplated.¹⁷ It proffers no evidence that this new form of relief, the purchase and inclusion of the Hahakea well in HWSCI's test year plant-in-service, is part of its Application, as

¹⁷To the contrary, HWSCI, in its response to CA-IR-53(b), states:

Today, if already developed wells were available to be purchased, [HWSCI] again would perform a similar analysis of purchasing the already developed wells versus developing new wells. Unfortunately, there are no already-developed wells available at this time for purchase.

HWSCI's response to CA-IR-53(b). See also HWSCI's response to CA-IR-48 (confidential seal).

amended.¹⁸ Instead, the limited information HWSCI provides in the docket record on the Hahakea well states:

Hahakea has been used basically for emergency backup, which explains its limited usage. Additionally, its pumpage needs to be controlled because its chloride levels can rise rapidly.¹⁹

The commission finds that HWSCI fails to meet its burden for introducing new evidence under HAR § 6-61-139.

HWSCI offers no explanation as to why this new evidence was not previously adduced, and it makes no request to introduce this new evidence into the docket record. HAR § 6-61-139. Moreover, while HWSCI's general manager avers that "HWSCI recently reopened negotiations with Amfac regarding the purchase of Amfac's Hahakea well[,]" it provides no specifics as to when it recently reopened negotiations; in particular, whether negotiations were reopened following HWSCI's receipt of Decision and Order No. 21644. The timing of HWSCI's new form of relief is suspect, and the contents of its supporting Affidavit are vague.²⁰

¹⁸See Decision and Order No. 16648, filed on November 5, 1998, at Section IV, page 7, in Docket No. 97-0203, *In re Elyte ATM Services, Inc.* (the applicant's request to provide intra-company delivery service was beyond the scope of its application, and thus, the commission declined to act on this request).

¹⁹HWSCI's response to CA-SIR-29(3). See also HWSCI's responses to CA-IR-2 (HWSCI's service area map), CA-IR-43(g) (the "Hahakea well has been utilized in the past, however Amfac has not assured [HWSCI] of any future use"), CA-IR-48 (confidential seal), and CA-SIR-2 (HWSCI's color-coded service area map).

²⁰The Affidavit is couched in speculative terms: "if these negotiations are fruitful, HWSC may be able to complete the purchase of the Hahakea well[,]" and HWSC "believes that the Hahakea well will meet its needs for one of the two wells requested in Docket No. 03-0275[.]" HWSCI's Affidavit, paragraphs 4 and 5 (emphasis added).

B.

HAR § 6-61-137

With respect to the merits of HWSCI's Motion, HWSCI fails to meet its burden of proving that the commission's decision to disallow the inclusion of the proposed two (2) new wells in HWSCI's test year plant-in-service was "unreasonable, unlawful, or erroneous." HAR § 6-61-137. Instead, "HWSC acknowledges the Commission's objection to allowing the two wells to be included in rate base if they are not placed in service within the test year."²¹ The commission reiterates:

There appears no credible evidence in the docket record that the installation of one (1) or both new wells will be completed and used and useful during the test year. HWSCI is uncertain as to when the construction and installation of the two (2) new wells will be completed and used and useful for the provision of water utility service.

HWSCI states that: (1) it is still working on acquiring the new well sites; (2) it is not at the permitting stage; (3) to date, no project time lines are available to identify critical milestones that must be met to develop each new well; and (4) the proposed design capacities of the new wells have not been determined. HWSCI, in essence, has yet to obtain any sites or commence construction of the new wells.²²

C.

Denial of Motion

The commission denies HWSCI's Motion.

²¹HWSCI's Motion, at 4.

²²Decision and Order No. 21644, at 14 - 15 (footnotes and citations therein omitted).

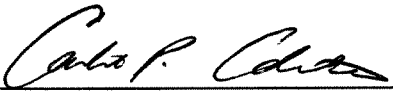
III.

Orders

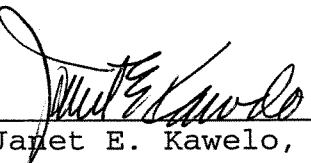
THE COMMISSION ORDERS that HWSOI's Motion for Partial Reconsideration, filed on February 22, 2005, is denied.

DONE at Honolulu, Hawaii MAR 18 2005.

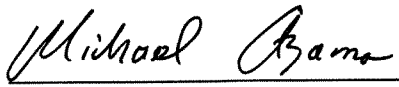
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

03-0275.sl3

order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall be filed within ten days after the decision or order is served upon the party, setting forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous. [Eff JUL 17 1992] (Auth: HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§91-2, 269-6, 271-32, 271G-7)

§6-61-138 Effect of filing. (a) The filing of a motion for reconsideration or rehearing shall not stay a commission decision and order. However, if a motion for a stay accompanies the motion, the commission shall act on the motion for a stay promptly. If a stay is granted, the stay shall remain in effect until disposal of the motion for reconsideration.

(b) Notwithstanding the foregoing, pursuant to section 271-32(b), HRS, a commission order granting a change in motor carrier rates shall be automatically stayed upon the filing of a motion for reconsideration of the order. The stay shall remain in effect until the earlier of: the date the commission renders its decision on the motion for reconsideration or the twentieth day after the motion is filed. The commission may set aside this automatic stay for good cause shown. [Eff JUL 17 1992] (Auth: HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§91-2, 269-6, 271-32, 271G-7)

§6-61-139 Additional evidence. When, in a motion filed under this subchapter, a request is made to introduce new evidence, the evidence adduced shall be stated briefly, that evidence must not be cumulative, and an explanation must be given why that evidence was

SUBCHAPTER 14

MOTIONS FOR RECONSIDERATION OR REHEARING

§6-61-137 Motion for reconsideration or rehearing. A motion seeking any change in a decision,

§6-61-139

not previously adduced. [Eff JUL 17 1992] (Auth:
HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§91-2,
269-6, 271-32, 271G-7)

§6-61-140 Replies to motions. The commission may
allow replies to a motion for rehearing or
reconsideration or a stay, if it deems those replies
desirable or necessary. [Eff JUL 17 1992] (Auth:
HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS §§91-2,
269-6, 271-32, 271G-7)

§6-61-141 Successive motions. A successive
motion under this subchapter or section 6-61-124
submitted by the same party or parties and upon
substantially the same grounds as a former motion which
has been considered or denied by the commission shall
not be again considered. [Eff JUL 17 1992]
(Auth: HRS §§91-2, 269-6, 271-9, 271G-7) (Imp: HRS
§§91-2, 269-6, 271-32, 271G-7)

§6-61-142 Oral argument. Oral argument shall not
be allowed on a motion for reconsideration, rehearing,
or stay, unless requested by the commission or a
commissioner who concurred in the decision.
[Eff JUL 17 1992] (Auth: HRS §§91-2, 269-6,
271-9, 271G-7) (Imp: HRS §§91-2, 269-6, 271-32,
271G-7)

§§6-61-143 to 145 (Reserved)

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21700 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.


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DATED: MAR 18 2005